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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MID-PLAINS RURAL)
TELEPHONE COOPERATIVE, INC.)
)
PETITION, NSD-L-96-3)
)
Petition to Change the LATA Association of the)
Silverton, Texas Exchange From the Amarillo,)
Texas LATA to the Lubbock, Texas LATA)

CC Docket No. 96-158

DOCKET FILE COPY ORIGINAL

COMMENTS
of the
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Association ("NTCA") submits the following Comments in response to the Commission's Public Notice DA 96-1189, released on July 26, 1996, inviting comments on the above captioned petition for a LATA association change.

NTCA is a national association of approximately 500 local exchange carriers ("LECs"), including Mid-Plains Rural Telephone Cooperative, Inc. ("Mid-Plains"). The LECs that make up NTCA's membership provide telecommunications services to end users and interexchange carriers throughout rural America.

In conjunction with its acquisition of the Silverton, Texas telephone exchange from GTE Southwest (GTE), Mid-Plains has requested expedited action on its request to change the LATA

AS

association of the Silverton exchange from the Amarillo, Texas LATA (546) to the Lubbock, Texas LATA (544). As demonstrated by Mid-Plains, the public benefit afforded by the proposed LATA association change far outweighs the potential adverse effects of a lengthy proceeding.

Mid-Plains was poised to link Silverton and Kress via fiber optic cable and route Silverton traffic into Lubbock over its existing fiber optic facilities once its transaction with GTE had been finalized.¹ In view of the circumstances presented by Mid-Plains, NTCA submits that the Commission's decision to consider the LATA reassociation request via a notice and comment procedure unreasonably and unnecessarily delays the proposed service.

In the past, a BOC and/or independent followed a waiver procedure to reassociate the LATA boundaries assigned to it by the Plan of Reorganization approved by Judge Greene under the Modified Final Judgment (MFJ). It was a process employed by a rural telephone company whenever it needed to reconfigure its network to route its traffic to interconnect with BOC offices in LATAs other than the original LATA assigned to it by the MFJ.² Without the MFJ to govern, the state of the law regarding LATA reassociations is uncertain.³ A question remains as to whether FCC approval is required for the rural telco to re-route its traffic in a way that associates it with a different LATA. Because the Act contains no explicit mechanism for

¹ The transaction with GTE was due to close on May 31, 1996.

² The rural telco would ask the Department of Justice to recommend to Judge Greene to waive the original LATA boundaries as to the traffic at issue. The waivers were generally approved but the process was often lengthy, usually stretching over several months.

³ The Telecommunications Act of 1996 ("1996 Act") terminated the MFJ.

revisions in independent associations, NTCA has recommended the FCC justify the association changes as “modification[s] of the traffic associated with a LATA until a BOC is permitted to provide interLATA services.”⁴

Mid-Plains has notified all carriers affected by the proposed change and certified to the Commission that it has not received any objections to its notification.⁵ Southwestern Bell and GTE, the affected interconnecting local exchange carriers, concurred with the LATA association change. Accordingly, NTCA questions whether the Commission's decision to initiate a notice and comment procedure was necessary especially in consideration of the fact that this request is uncontested. The Commission should refrain from initiating notice and comment proceedings for LATA association change requests made by small, rural local exchange carriers if this situation presents itself in the future.⁶

Both Section 271 and its predecessor, the MFJ, were based on the presumption that where

⁴ Letter from National Telephone Cooperative Association to Geraldine Matise, Chief of the Network Services Division, Common Carrier Bureau of 5/16/96, at 3-4 (“NTCA Letter”). The Commission’s authority to sanction the “modification of the traffic associated with a LATA” is sufficiently tied to the authority of the Commission to approve modifications in LATAs by BOCs pursuant the Section 3(43)(B) of the 1996 Act.

⁵ Declaration of Danny Johnson, Manager of Mid-Plains Telephone Cooperative, Inc., May 29, 1996.

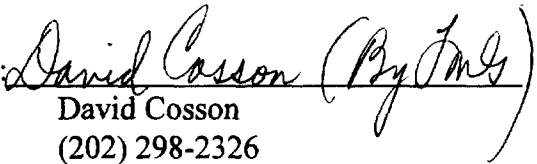
⁶ The Commission has chosen a notice and comment period for the LATA reassociation petition that extends at least until September 10, 1996. NTCA suggests that the Commission adopt an expedited procedure to handle these requests in the future. NTCA Letter, *supra* note 4, at 4. NTCA's recommended procedure provides any affected carriers a 10 day window in which to submit objections to the pending LATA association change. *Id.* If no objections are raised, the "modification to the traffic associated with the LATA" will be deemed approved if no action is taken by the Commission within an additional 10 days. *Id.* If the "petitioner" receives objections, it should notify the Commission that the request should be approved regardless or explain any changes to its proposed plan that address the objection. *Id.*

a BOC had monopoly control over the origination and termination of traffic in two or more MSAs, it would be able to impede or prevent competition between them. However, rural telephone companies which make up less than 3 percent of the nation's access lines and are spread throughout the United States,⁷ do not possess the market power to exert this level of control. Thus, Congress never established a regulatory mechanism to guide the routing of rural telephony traffic to protect interLATA competition. Even the consent decree restrictions on GTE were lifted, lending further support to the presumption that Congress did not intend for the interLATA regulation of independent traffic.⁸

In light of the actions taken by Mid-Plains, NTCA respectfully submits that the public interest would be served best by the Commission's expeditious approval of the requested LATA association change.

Respectfully submitted,

NATIONAL TELEPHONE
COOPERATIVE ASSOCIATION

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⁷ There are no rural access lines in the District of Columbia, Delaware, Rhode Island and Hawaii.

⁸ Arguably, GTE, the fourth largest LEC in the U.S. in 1995, is an independent that could have more than a *de minimus* impact on the viability of competition between two LATAs.

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-158 was served on this 23rd day of August 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached service list:


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